

INCORPORATION OF COMPANIES ENGAGED IN
FOREIGN TRADE

HEARING

BEFORE THE

SUBCOMMITTEE OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

SIXTY-FIFTH CONGRESS

THIRD SESSION

ON

S. 5194

A BILL TO PROVIDE FOR THE INCORPORATION OF CERTAIN
COMPANIES ENGAGED IN FOREIGN TRADE

JANUARY 31, 1919

Printed for the use of the Committee on the Judiciary



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INCORPORATION OF COMPANIES ENGAGED IN FOREIGN TRADE.

FRIDAY, JANUARY 31, 1919.

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met in the room of the Committee on the Judiciary, in the Capitol, at 10.30 o'clock a. m., Senator Duncan U. Fletcher presiding.

Present: Senator Fletcher.

The subcommittee had under consideration the following bill:



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65TH CONGRESS, }
3D SESSION. }

S. 5194.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 14, 1918.

Mr. FLETCHER introduced the following bill; which was read twice and referred to the Committee on the Judiciary.

A BILL

To provide for the incorporation of certain companies engaged in foreign trade.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That a corporation may be formed, as provided in this Act,
4 solely for the purpose of engaging in and carrying on trade
5 or commerce in goods, wares, or merchandise exported
6 or imported, or to be exported or imported, from or to
7 the United States of America, or any Territory thereof,
8 to or from any foreign country or noncontiguous territory
9 of the United States of America, including the production
10 or manufacture of such goods, wares, or merchandise, and
11 for engaging in any lawful enterprise in foreign countries or

1 noncontiguous territories of the United States of America,
2 or in localities in which the United States of America exer-
3 cises extraterritorial jurisdiction.

4 SEC. 2. That any number of persons, not less than
5 three, a majority of whom shall be citizens of the United
6 States of America, desiring to become incorporated under
7 this Act, shall subscribe and acknowledge articles of incor-
8 poration, which must contain: (1) The name of the cor-
9 poration, which shall end with the legend "Inc. U. S. A."
10 (The use of which legend as the part of the name of any
11 firm, corporation, or association engaged in interstate or
12 foreign commerce and not chartered under this Act, is
13 hereby prohibited); (2) the location of its principal office
14 and the place where its principal business is to be transacted;
15 (3) the purpose for which it is formed; (4) the amount of
16 its capital stock and the number of shares into which it is
17 divided.

18 SEC. 3. That articles of incorporation shall be acknowl-
19 edged before an officer authorized to administer an oath, the
20 form of which acknowledgment shall conform to the require-
21 ments of the place where it is taken.

22 Articles of incorporation shall be filed with the Secre-
23 tary of Commerce, who shall record them and shall also
24 record certificates relating to the corporation thereafter filed
25 with him. In the case of corporations to be formed in non-

1 contiguous territories of the United States of America or in
2 localities in which the United States of America exercises
3 extraterritorial jurisdiction, the articles of incorporation shall
4 be filed in duplicate with the clerk of the highest court of the
5 United States of America in the respective territory or
6 locality who shall record them and shall also record cer-
7 tificates relating to the corporation thereafter filed with him.

8 SEC. 4. That upon filing articles of incorporation the
9 persons who subscribe them, their associates, successors, and
10 assigns, by the name and style provided therein, shall be a
11 body corporate with succession, power to sue and be sued
12 in any court of law or equity of the United States, or of the
13 various States and Territories, including the District of
14 Columbia or of any State or Territory in which the United
15 States of America enjoys sovereignty, or in the courts of
16 any foreign country, or in the courts of the United States
17 of America in any country in which the United States of
18 America has extraterritorial jurisdiction, contract and be
19 contracted with; also, unless specially limited, to acquire and
20 hold all property, real or personal, necessary to effect the
21 object for which it is created, and at pleasure convey it in
22 conformity with its regulations and the laws of the country
23 in which it is located. Such corporation also may make,
24 use, and at will alter a common seal, and do all other acts
25 needful to accomplish the purposes of its organization.

1 SEC. 5. That the Seeretary of Commeree or other
2 recording officer named in section three shall not file or
3 record any articles of incorporation wherein the corporate
4 name is likely to mislead the public as to the nature or pur-
5 pose of the business its charter authorizes, nor if such name
6 is that of an existing corporation or so similar thereto as to
7 be likely to mislead the public, unless the written consent
8 of the existing corporation, signed by its president and secre-
9 tary, be filed with such articles. Whenever, after articles of
10 incorporation have been filed or recorded by the Secretary
11 of Commerce, and it shall then appear that the corporate
12 name is that of an earlier-formed corporation, or so similar
13 thereto as to be likely to mislead the public, the Seeretary of
14 Commerce is authorized to require a change of name, unless
15 the written consent of the earlier-formed corporation is
16 obtained and filed or recorded.

17 SEC. 6. That a copy of the articles of incorporation so
18 filed and duly certified by the Seeretary of Commerce or
19 other recording officer shall be prima facie evidence of the
20 corporation therein named.

21 SEC. 7. That the persons named in the artieles of in-
22 corporation under this Aet, or a majority of them, shall
23 order books to be opened for subscriptions to the capital
24 stock of the corporation at such time or times and place or
25 places as they deem expedient. A majority of the capital

1 stock shall at all times be owned by citizens of the United
2 States of America. For the purpose of this Act, companies
3 incorporated under the laws of any State or Territory of the
4 United States of America shall not be held to be citizens of
5 the United States of America unless a majority of the capital
6 stock thereof is at all times owned by citizens of the United
7 States of America, and unless a majority, including the presi-
8 dent or chairman of the board of trustees or directors, are
9 citizens of the United States of America.

10 SEC. 8. That such persons shall give at least thirty
11 days' notice of the times and places of opening such books
12 of subscription, by publication in a newspaper published or
13 generally circulated in the place or places where they are
14 to be opened. Such notice, however, may be waived in
15 writing by all the incorporators, but the waiver shall be
16 entered or copied in the corporate records.

17 SEC. 9. That at the time of making a subscription to
18 the capital stock of a corporation, twenty per centum of each
19 share subscribed for shall be payable. The residue shall be
20 paid in such installments at such times and places and to
21 such persons as the directors of the corporation require.

22 SEC. 10. That when twenty per centum of the capital
23 stock is subscribed, the subscribers to the articles of incor-
24 poration or a majority of them at once shall so certify in

1 writing to the Secretary of Commerce or other recording
2 officer with whom articles have been previously filed.

3 SEC. 11. That the incorporators shall be liable to any
4 person affected thereby in the amount of any deficiency in
5 the actual payment of twenty per centum on the stock
6 subscribed for at the time of so certifying to the Secretary
7 of Commerce or other recording officer.

8 SEC. 12. That as soon as such certificate is made and
9 filed with the Secretary of Commerce or other recording
10 officer, the signers thereto shall give notice to the stock-
11 holders, as provided in section eight hereof, to meet at such
12 time and place as the notice designates for the purpose of
13 choosing not less than five directors, to continue in office
14 until the time fixed for the annual election and until their
15 successors are elected and qualified. But if all the sub-
16 scribers to the capital stock are present in person or by
17 proxy, such notice may be waived by them in writing.

18 SEC. 13. That at the time and place appointed, directors
19 shall be chosen by ballot, by the stockholders who attend,
20 either in person or by lawful proxies. At such and all other
21 elections of directors the election shall be by ballot and each
22 stockholder shall be entitled to as many votes as he owns
23 shares of stock in the company, and the persons receiving
24 the greatest number of votes shall be elected directors.
25 Directors shall not be elected in any other manner. No per-

1 son shall vote on a share of stock on which an installment is
2 due and unpaid.

3 SEC. 14. That at such first election the subscribers of
4 the articles of incorporation present, or any other persons
5 chosen by the stockholders present, shall be inspectors of
6 election, certify what persons are elected directors, and
7 appoint the time and place for holding their first meeting.

8 SEC. 15. That before every meeting held for the election
9 of directors, or for the determination of any question, by the
10 stockholders of a corporation, or by the subscribers to its
11 stock, or by its creditors and stockholders for its reorganiza-
12 tion, the officer or agent of the corporation having charge of
13 the transfer of its stock, under oath must make out a list of
14 its stockholders, showing the number and classes of shares
15 held by each, as shown by its books, on the date fixed for
16 closing the stock transfers before its meetings; or if no time
17 be fixed therefor, then at the hour of noon on the tenth day
18 prior to the date of such meeting. Such list shall be de-
19 livered to the inspectors of the meeting and be prima facie
20 evidence of the ownership of its stock. In case good cause
21 is shown for the absence of such list the inspectors shall
22 ascertain the ownership of stock by the corporation books,
23 stock certificates, or other proof.

24 SEC. 16. That the inspectors so appointed, or if none
25 be appointed, then those selected by the meeting, shall

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1 receive and count the votes cast at such meeting, or at any
2 adjournment thereof, either upon an election or for the
3 decision of any question to be decided by vote, and determine
4 the result. Their certificate shall be prima facie evidence
5 thereof.

6 SEC. 17. That the corporate powers, business, and
7 property of corporations formed under the provisions of
8 this Act shall be exercised, conducted, and controlled by
9 the board of directors.

10 SEC. 18. That a majority of such directors must be
11 citizens of the United States. All directors and executive
12 officers shall be holders of stock of the company for which
13 they are chosen, in an amount to be fixed by the by-laws.

14 SEC. 19. That when the office of director becomes
15 vacant the board of directors may fill it for the unexpired
16 term as provided for by the by-laws.

17 SEC. 20. That as soon thereafter as is convenient the
18 board of directors chosen at any election shall select one of
19 their number to be chairman thereof, and unless the regu-
20 lations of the body otherwise provide for the election of a
21 president and such officers, also appoint a secretary and
22 treasurer of the corporation and such other officers as may
23 be necessary.

24 SEC. 21. That by a vote of a majority of its stock, at
25 a regular meeting of a corporation organized under the pro-

visions of this Act, it may increase the number of its directors to such number as is deemed advisable. In like manner at any time the number of directors can be reduced to not less than five. At a special meeting of stockholders also called and of which notice was given as provided for the election of directors, by vote of a majority of its stock, the increase in the number of directors may be made. Those elected shall hold their offices until the next annual election for directors and until their successors are elected and qualified.

SEC. 22. That a corporation organized under the provisions of this Act must have a capital stock, which may consist of common and preferred or common only; but at no time shall the amount of preferred stock at par value exceed two-thirds of the actual capital paid in in cash or property.

SEC. 23. That when the capital stock is to be both common and preferred, it may be provided in the articles of incorporation that the holders of the preferred stock shall be entitled to yearly dividends of not more than eight per centum, payable quarterly, half-yearly, or yearly, out of the surplus profits of the company each year in preference to all other stockholders. Such dividends also may be made cumulative.

SEC. 24. That a corporation issuing both common and preferred stock may create designations, preferences, and

1 voting powers, or restrictions or qualifications thereof in the
2 certificate of incorporation, and if desired, preferred stock
3 may be made subject to redemption at not less than par after
4 a fixed time and at a set price, to be expressed in the stock
5 certificates thereof.

6 SEC. 25. That should any corporation organized under
7 the provisions of this Act become insolvent, no holder of
8 preferred stock shall be liable for its debts until after the
9 remedy against the common stockholders upon their liability,
10 as hereinafter provided, has been exhausted, and then only
11 for such amount as remains unpaid. Such liability in no
12 event shall exceed that fixed by this Act for the common
13 stock of such corporation.

14 SEC. 26. That upon the insolvency or dissolution of any
15 corporation organized under the provisions of this Act the
16 holders of preferred stock shall be entitled to receive from
17 the assets of the corporation remaining after paying its lia-
18 bilities the full payment of its par value before anything is
19 paid to the common stock.

20 SEC. 27. That the directors of such corporation, when
21 organized, shall cause to be kept a record of all stock sub-
22 scribed and transferred, and its secretary or recording officer
23 shall register all subscriptions and transfers of stock. For
24 that purpose a book shall be kept, and when a certificate of
25 stock is assigned and delivered by a stockholder the assignee

1 thereof on demand may have it duly transferred therein by
2 such officer, who at the same time shall enroll also the name
3 of the assignee as a stockholder. The books and records of
4 all corporations organized under the provisions of this Act
5 at all reasonable times shall be open to the inspection of every
6 stockholder.

7 SEC. 28. That title to a certificate and to the shares
8 represented thereby can be transferred only,

9 (1) By delivery of the certificate, indorsed either in
10 blank or to a specified person by the person appearing by
11 the certificate to be the owner of the shares represented
12 thereby, or

13 (2) By delivery of the certificate and a separate docu-
14 ment containing a written assignment of the certificate or a
15 power of attorney to sell, assign, or transfer the same or the
16 shares represented thereby, signed by the person appearing
17 in the certificate to be the owner of shares represented
18 thereby. Such assignment or power of attorney may be
19 either in blank or to a specified person.

20 The provisions of this section shall be applicable
21 although the charter or articles of incorporation or by-laws
22 of the corporation issuing the certificate and the certificate
23 itself provide that the shares represented thereby shall be
24 transferable only on the books of the corporation or shall
25 be registered by a registrar or transferred by a transfer agent.

1 SEC. 29. That nothing in this Act shall be construed
2 as enlarging the powers of an infant or other persons lacking
3 full legal capacity, or of a trustee, executor or administrator,
4 or other fiduciary, to make a valid indorsement, assignment,
5 or power of attorney.

6 SEC. 30. That nothing in this Act shall be construed
7 as forbidding a corporation—

8 (1) To recognize the exclusive right of a person regis-
9 tered on its books as the owner of shares to receive dividends
10 and to vote as such owner; or

11 (2) To hold liable for calls and assessments a person
12 registered on its books as the owner of shares.

13 SEC. 31. That the title of a transferee of a certificate
14 under a power of attorney or assignment not written upon
15 the certificate, and the title of any person claiming under
16 such transferee, shall cease and determine if, at any time
17 prior to the surrender of the certificate to the corporation
18 issuing it, another person for value in good faith, and with-
19 out notice of the prior transfer, shall purchase and obtain
20 delivery of such certificate with the indorsement of the
21 person appearing by the certificate to be the owner thereof,
22 or shall purchase and obtain delivery of such certificate and
23 the written assignment or power of attorney of such person,
24 though contained in a separate document.

1 SEC. 32. That there shall be no lien in favor of the
2 corporation upon the shares represented by a certificate
3 issued by it, and there shall be no restriction upon the
4 transfer of shares so represented by virtue of any by-laws
5 or otherwise, unless the right of the corporation to such lien
6 or the restriction is stated upon the certificate.

7 SEC. 33. That if an installment on stock is unpaid for
8 thirty days after the time it was to be paid, whether the
9 stock is held by the subscriber, an assignee, or transferee, it
10 may be collected by suit, or the directors may sell such stock
11 for the installment then due.

12 SEC. 34. That before the directors can sell such stock
13 they shall give thirty days' notice of the time and place of
14 sale, in some newspaper in general circulation of the place
15 or at the place where the delinquent holder resided when he
16 subscribed for it or became such assignee or transferee, or
17 of his actual residence at the time of sale.

18 SEC. 35. That when a sale of such stock is made, if after
19 paying from its proceeds the amount due on the stock, a
20 balance remains, the same shall, on demand, be paid to the
21 owner. But if such proceeds fail fully to pay such install-
22 ment, any balance may be recovered by action against the
23 subscriber, assignee, or transferee.

24 SEC. 36. That a corporation organized under the pro-
25 visions of this Act may purchase, or otherwise acquire, and

1 hold shares of stock in other kindred but not competing cor-
2 porations. This shall not authorize the formation of a trust
3 or combination for the purpose of restricting trade or compe-
4 tition.

5 SEC. 37. That every corporation organized under the
6 provisions of this Act, annually shall make a statement of
7 its financial conditions, setting forth its assets and liabilities,
8 and file the same with the Secretary of Commerce or other
9 recording officer and furnish to each stockholder a true copy
10 thereof.

11 SEC. 38. That the stockholders of a corporation organ-
12 ized under the provisions of this Act shall be severally and,
13 individually liable to the creditors of such corporation for the
14 unpaid amount due upon the balance of stock held by them,
15 respectively, for all debts and contracts made by such cor-
16 poration, until the whole amount of capital stock fixed and
17 limited by such corporation shall have been paid in.

18 SEC. 39. That an action upon the liability of the stock-
19 holders of such corporation under the next preceding section
20 can only be brought within two years after the debt or obliga-
21 tion shall become enforceable against the stockholders.

22 SEC. 40. That the term "stockholder" as used in the
23 next preceding sections, shall apply not only to persons who
24 appear by the books of the corporation to be such, but also

1 to equitable owners of stock, although on the books of the
2 corporation it appears in the name of another person.

3 SEC. 41. That after the original capital stock of a cor-
4 poration organized under the provisions of this Act is fully
5 subscribed for, and an installment of twenty per centum on
6 each share of the stock has been paid thereon, such corpora-
7 tion may increase its capital stock or the number of shares
8 into which it is divided prior to organization by the unani-
9 mous written consent of all original subscribers. After
10 organization the increase may be made by a vote of the
11 holders of a majority of its stock, at a meeting called by a
12 majority of its directors, at least thirty days' notice of the
13 time, place, and object of which has been given by publica-
14 tion in some newspaper of general circulation and by letter
15 addressed to each stockholder whose place of residence is
16 known. Or the stock may be increased at a meeting of the
17 stockholders at which all are present in person or by proxy
18 and waive in writing such notice by publication or letter,
19 and also agree in writing to such increase, naming the
20 amount thereof to which they agree. A certificate of such
21 action shall be filed with the Secretary of Commerce or
22 other recording officer named in section three.

23 SEC. 42. That upon the assent in writing of the stock-
24 holders of a corporation, organized under the provisions of
25 this Act, representing at least three-fourths of its capital

1 stock, to increase the capital stock it may issue and dispose
2 of preferred stock in the manner provided therefor. Upon
3 the increase of stock, a certificate shall be filed with the
4 Secretary of Commerce or other recording officer.

5 SEC. 43. That upon the assent in writing of the persons
6 in whose names a majority of the shares of the capital stock
7 of a corporation organized under the provisions of this Act
8 stands on its books, the board of directors of such corpora-
9 tion may reduce the amount of its capital stock and the
10 nominal valuation of all the shares thereof, and issue cer-
11 tificates therefor. The rights of creditors shall not be affected
12 by such reduction in the amount of such capital stock, and a
13 certificate of such action shall be filed with the Secretary
14 of Commerce or other recording officer.

15 SEC. 44. That the directors of a corporation organized
16 under the provisions of this Act may adopt a code of by-laws
17 for their government, consistent with the regulations of the
18 corporation and the laws of the country in which its principal
19 office is located, and may change such by-laws at pleasure.

20 SEC. 45. That regulations for the government of cor-
21 porations organized under the provisions of this Act may
22 be adopted or changed by the assent thereto, in writing, of
23 the holders of two-thirds of the stock, or by a majority of
24 the stockholders present at a meeting held for that purpose,
25 notice of which has been given personally to each member

1 or stockholder, or by publication in some newspaper of
2 general circulation in the place where the head office of the
3 corporation is located.

4 SEC. 46. That when no other provision is especially
5 made, a corporation organized under the provisions of this
6 Act by its by-laws may provide—

7 (1) The time, place, and manner of calling and con-
8 ducting its meetings.

9 (2) The number of stockholders or members constitut-
10 ing a quorum.

11 (3) The time of the annual election for directors and
12 other officers, and the manner of giving notice thereof.

13 (4) The duties and compensation of directors and
14 other officers.

15 (5) The manner of election, or appointment, and the
16 tenure of office of all officers other than the directors.

17 SEC. 47. That a corporation organized under the pro-
18 visions of this Act may borrow money in any sum not ex-
19 ceeding the amount of its capital stock, issue its notes or
20 coupon or registered bonds therefor, bearing any legal rate
21 of interest, and secure their payment by a mortgage of its
22 property, real or personal, or both.

23 SEC. 48. That a mortgage of real and personal property
24 made by a corporation organized under the provisions of

1 this Act shall be duly recorded in the office of the recorder of
2 deeds or other proper officer at each place in which the real
3 or personal property mortgaged is situated or employed, and
4 a certified copy of such mortgage shall be filed with the Secre-
5 tary of Commerce or other recording officer.

6 SEC. 49. That a mortgage recorded with the recorder of
7 deeds or other proper officer, as provided for in the preceding
8 section, shall be a good and sufficient lien from the date of its
9 filing for record where it is recorded upon the personal as
10 well as the real property of such corporation.

11 SEC. 50. That a corporation organized under the pro-
12 visions of this Act which lawfully has issued registered or
13 coupon bonds, upon the request of a holder thereof, may
14 change such registered into coupon bonds, or coupon into
15 registered bonds, either by substitution or by proper indorse-
16 ment thereon. All liens, securities, and rights which existed
17 on or accrued to such original bonds shall be and continue
18 on and to such substituted or indorsed bonds.

19 SEC. 51. That no corporation organized under the pro-
20 visions of this Act shall sell its entire property and assets to
21 any person, persons, partnerships, associations, or corpora-
22 tion, whether organized for the same or similar purposes or
23 otherwise, unless three-fourths of the directors of such cor-
24 poration authorize the execution of an agreement therefor
25 prescribing the terms, considerations, and conditions thereof.

1 The considerations may be money, stock, bonds, or other
2 instruments for the payment of money, or any valuable
3 consideration.

4 SEC. 52. That the agreement provided for in the pre-
5 ceding section shall be submitted to the stockholders of the
6 corporation at a meeting called for the purpose, fifteen days'
7 notice of the time and place of holding which, and the object
8 thereof, shall be given by registered letter containing a
9 written or printed notice addressed to each of the persons
10 in whose names the stock of the corporation stands on its
11 books. But when all the stockholders are present at such
12 meeting in person or by proxy notice may be waived in
13 writing.

14 SEC. 53. That at such meeting of the stockholders the
15 agreement of the directors shall be considered and a vote by
16 ballot taken for its adoption or rejection. For each share
17 of stock on which all the installments called for by the board
18 of directors have been paid the holder thereof shall be enti-
19 tled to one vote. The ballots must be cast in person or by
20 proxy, and if three-fourths of all the votes cast at the meet-
21 ing be for the adoption of the agreement it shall be valid and
22 binding on such corporation. Upon its adoption the officers
23 of the corporation shall execute and deliver to the purchaser
24 good and sufficient deeds and transfers of all the property and

1 assets of the corporation upon the terms and conditions in
2 the agreement provided.

3 SEC. 54. That a sale of its entire property by a cor-
4 poration organized under the provisions of this Act, as here-
5 inbefore authorized, shall not be made for the formation of
6 or to a trust or combination for the purpose of restricting
7 trade or preventing competition.

8 SEC. 55. That a corporation organized under the pro-
9 visions of this Act may amend its articles of incorporation as
10 follows:

11 First. So as to change its corporate name, but not to
12 one already appropriated, or to one likely to mislead the
13 public.

14 Second. So as to change the place where it is to be
15 located, or its principal business transacted.

16 Third. So as to modify, enlarge, or diminish the objects
17 or purposes for which it is formed.

18 Fourth. So as to add to them anything omitted from
19 or which lawfully might have been provided for originally
20 in such articles. But the capital stock of such corporation
21 shall not be increased or diminished by such amendment, nor
22 the purpose of its original organization substantially changed.

23 SEC. 56. That amendments to articles of incorporation
24 may be made at any meeting of the stockholders thereof, of
25 which, and of the business to come before it, thirty days'

1 notice has been given by a majority of the directors in a
2 newspaper published and of general circulation at the place
3 where the corporation's principal place of business is located,
4 and by a vote of the owners of at least three-fifths of its
5 capital stock then subscribed.

6 SEC. 57. That when thus adopted, a copy of such
7 amendment, with a certificate thereto affixed, stating the fact
8 and date of its adoption, that such copy is a true copy
9 thereof, signed by the president and secretary of the cor-
10 poration, sealed with its seal, shall be filed with the Secretary
11 of Commerce, or other recording officer, who shall cause by
12 note on the margin of the record of the original articles filed
13 by such corporation, and on the margin of the index thereto,
14 the volume and page where such amendment is recorded.

15 SEC. 58. That amendments to articles of incorporation
16 shall not take effect until filed for record with the Secretary
17 of Commerce or other recording officer, nor unless it be
18 waived, as provided in the next section, until the corporation
19 gives notice of them, in some newspaper of general circula-
20 tion in the place where the principal office or business is
21 located, for three consecutive weeks.

22 SEC. 59. That all notices required by the preceding
23 section in such proceedings to amend the articles of incor-
24 poration, may be waived when the holders of all the capital
25 stock of a corporation consent thereto in writing.

1 SEC. 60. That directors of a corporation organized
2 under the provisions of this Act shall not make dividends
3 except from surplus profits arising from the business of the
4 corporation.

5 SEC. 61. That in order to ascertain the surplus profits
6 from which a dividend may be made, in the account of profit
7 and loss there shall be charged and deducted from the actual
8 profits—

9 First. All ordinary and extraordinary expenses, paid
10 or incurred, in managing the affairs and transacting the
11 business of the corporation.

12 Second. Interest paid, or then due or accrued, on debts
13 it owes.

14 Third. All losses of the corporation. In computing its
15 losses, debts owing to it which have been due without prose-
16 cution, or interest paid thereon, for more than one year, or
17 upon which judgment was recovered, but has been more than
18 two years unsatisfied, and on which also for that period no
19 interest was paid shall be included.

20 SEC. 62. That when all the capital stock of a corpora-
21 tion has not been actually paid in the corporation shall not
22 advertise the amount of authorized capital stock without
23 also stating the amount actually paid in, nor shall a corpora-
24 tion advertise a greater dividend than has actually been
25 earned and credited or paid to its stockholders.

1 SEC. 63. That every director of such a corporation who
2 violates or is concerned in violating any provision of the four
3 preceding sections hereof shall be personally liable to the
4 creditors and stockholders of the said corporation for any loss
5 which thereby they respectively sustain.

6 SEC. 64. That every corporation organized under the
7 provisions of this Act shall file an annual report with the
8 Secretary of Commerce or other recording officer during the
9 month of January, in such form as the Secretary of Com-
10 merce may prescribe. This report shall be accompanied by
11 an affidavit in such form as the Secretary of Commerce may
12 prescribe, subscribed and sworn to by an officer of the cor-
13 poration having knowledge of the facts therein contained.

14 SEC. 65. That upon the dissolution of a corporation
15 organized under the provisions of this Act, and unless other
16 persons be appointed by the stockholders, the directors of
17 the affairs of such corporation shall be the trustees of the
18 creditors and stockholders thereof, and have full power to
19 settle its affairs, collect, and pay outstanding debts, and
20 divide among the stockholders the money and other property
21 remaining, in proportion to the stock of each stockholder
22 paid up, after the payment of debts and other necessary
23 expenses.

24 SEC. 66. That if all the stockholders present at such
25 meeting in person or by proxy decide to surrender and

1 abandon its corporate authority the corporation shall be
2 abandoned and dissolved upon the filing of a certificate of
3 the abandonment or dissolution with the Secretary of Com-
4 merce.

5 SEC. 67. That when a majority of the directors or other
6 officers having the management of a corporation organized
7 under the provisions of this Act which has completely closed
8 its business and paid all the debts and liabilities incurred by
9 it desire to surrender its corporate authority and franchises,
10 they or the president of such board of directors may call a
11 meeting of the stockholders at such time or place as he or
12 they designate, by publication for four weeks in some news-
13 paper published and of general circulation of the country
14 wherein the principal office of the corporation is located and
15 by written notices addressed to each of the stockholders
16 whose residence is known of the object, time, and place
17 of the meeting.

18 SEC. 68. That the persons so constituted trustees may
19 sue for and recover the debts and property of the dissolved
20 corporation by the name of trustees of the corporation, de-
21 scribing it by its corporate name, and jointly and severally
22 they shall be responsible to the creditors and stockholders of
23 the corporation to the extent of its property and effects com-
24 ing into their hands. Such trustees may be made or become
25 parties to any action by or against the corporation. All

1 liens or judgments existing at the time of the dissolution
2 either in favor of or against the corporation shall continue
3 in force as if the dissolution had not taken place.

4 SEC. 69. That no corporation created under the pro-
5 visions of this Act shall by any implication or construction
6 be deemed to possess the power of carrying on the business
7 of discounting bills, notes, or other evidences of debt, of
8 receiving deposits of money, or foreign coins, or buying and
9 selling bills of exchange, or of issuing bills, notes, or other
10 evidences of debt for circulation as money: *Provided, how-*
11 *ever,* That corporations created or to be created under the
12 provisions of this Act to buy, sell, and otherwise deal in
13 notes (not including the discounting of notes), open ac-
14 counts, and other similar evidences of debt (not including
15 bills of exchange), or to loan money and to take notes, open
16 accounts, and other similar evidences of debt as collateral
17 security therefor, shall not be construed or considered to be
18 within the prohibition of this section: and corporations
19 created or to be created for such purposes may charge such
20 amounts as may be agreed upon by the respective parties.

21 SEC. 70. That in order that this Act may be as effec-
22 tive, useful, and attractive as similar acts enacted by other
23 countries, and in order that corporations created under this
24 Act may be on an equal footing in foreign trade with cor-

1 porations created under this Act and doing business ex-
2 clusively in countries foreign to the United States and those
3 countries in which the United States exercises extraterritorial
4 jurisdiction shall be exempt from all Federal tax of any
5 nature whatever, except the fees for filing the articles of
6 incorporation and such other fees as may be prescribed by
7 the Secretary of Commerce under the provisions of this Act.

8 SEC. 71. That in the case of corporations formed under
9 this Act in localities in which the United States of America
10 exercises extraterritorial jurisdiction, at least fifty-one per
11 centum of the capital stock of the corporation shall at all
12 times be owned by citizens of the United States of America.

Senator FLETCHER. Mr. Secretary, you want to be heard on this bill?

**STATEMENT OF HON. WILLIAM C. REDFIELD, SECRETARY
OF COMMERCE.**

Secretary REDFIELD. Senator, I am going to say what I have to say very briefly, and then leave Mr. Denby, who has the laboring oar, and Mr. Cutler, Chief of the Bureau of Foreign and Domestic Commerce, and Mr. Thurman to do the rest. Shall I proceed?

Senator FLETCHER. Yes, sir. I could not get a day that would suit the other members of the subcommittee, so they have authorized me to go ahead, and as long as this hearing is to be printed I think perhaps that course will be satisfactory.

Secretary REDFIELD. I will speak, Mr. Chairman, of the general matters involved, leaving it to Mr. Denby, special assistant to the Department of State, who has had a long residence in China, to speak in detail.

At present no company formed by Americans and with American capital, trading exclusively abroad, can be incorporated except under the laws of one of our 48 States. These laws are unlike one another; they are constantly changing; they differ very considerably in powers, in restrictions, in opportunities; but perhaps one of the chiefest difficulties in foreign markets—and it should be borne in mind that I am speaking now exclusively of foreign markets and of companies which trade only in them and which do not do business in the United States—is that the individual States are not known and understood as distinct from, separate from, the Government of the United States itself.

In the Far East, for example, a company organized under the laws of any specific State has always a question concerning its origin. The State is not known or, if it is known, not understood. The foreign merchant may not always know why instead of a charter being given from the National Government it is given from a State which forms but a portion of that Government. He is accustomed in his foreign transactions to dealing with nations and not with subdivisions of nations. He would, in many instances, wonder whether a charter from one of our States was not akin in character to a charter from a subdivision of France or from a subdivision of Great Britain or a subdivision of some other country. The independent sovereignty of our States within their own concerns is something that he often does not comprehend. He realizes very well that the company having this State charter has not the official parentage of the National Government. It leads to doubt.

To meet this proposition Great Britain has, for instance, in her colony of Hongkong, which is widely known, granted charters of that colony; and American concerns desiring to incorporate have, as a matter of fact, because of that fact, because the Hongkong charter was understood and its laws were clear, incorporated their companies under the Hongkong laws. In that respect American citizens have

thus become, in their corporate relations, subjects of the British Empire, subject certainly to its laws and its regulations, because it was on the whole more advantageous to them to thus, in a measure, expatriate themselves in their corporate relations than it was to attempt to make plain to people who did not understand the peculiar construction of our Government why one of the separate entities which form our Republic acts in the matter instead of the Republic itself.

It is a matter of prestige very largely. It is a matter of doing away with the necessity of making explanations. It is a matter of establishing credit on a broad scale; or perhaps it may be summed up in this respect, that it is a matter of establishing confidence.

In the foreign trade nothing is more important than confidence. On it all transactions are based; and perhaps the greatest single step of the kind that would be possible for us to take now would be thus to throw the mantle of Federal authority and the prestige of the Federal name over corporate activities who function wholly abroad and who come into conflict in no way with any State laws by any of their operations, and who would thus get the benefit of the national power and the national prestige, for it alone is fully comprehended and understood.

I think I ought to say also that this in no way involves the question, to my mind, of the Federal law for domestic corporations. This is a foreign matter and has no relation that I can see to domestic matters. I think that the two should not be now confused, and to bring up this as forming an entering wedge for domestic corporations is a mistake. It has no relation, as I can see, to that matter of domestic Federal charters. Conditions are different. Here we are functioning in a field where it has been shown by experience that the local or the State charter can not and does not meet the situation. Men will go elsewhere, our loyal citizens will incorporate under foreign laws, because, in substance, the situation requires them to do so. And the acts performed under these foreign charters by Americans thus incorporated are acts which have no relation to the territorial jurisdiction or the domestic commerce of the United States, except so far as every foreign transaction, in its final reaction, comes back through other sources to this country, as they of course all do. But the operations of these companies are carried on wholly abroad, and they can not, as experience shows, be carried on now successfully under charters which, to the foreign mind, may be under a limitation of that kind and, it is a fact, are local charters.

The foreign merchant seeking to invest, as Chinese willingly do, in foreign companies, would look in vain in his country for the representative of a State from whom he could ascertain facts, from whom he could learn the scope of their laws and their nature; but he does know the United States of America, and it has representatives there. So, in like manner, he knows the independent, self-governing colony of Hong Kong, and he can determine what its laws are. I think we might get, perhaps, a view at this situation if we remove it for the moment from our own country and look at it as if we were orientals ourselves, willing to invest in a company operating in our country under a charter which was, say, from some South American republic. I think we should all understand what a charter from Argentina or from Brazil meant. We should be able to go to the

embassies or the legations of those countries and determine what their corporate laws were. We would recognize them as responsible authoritative powers. But I question if we would know the names of the states which compose those federal republics; and I think if we were offered a charter from one of the states composing the Republic of Brazil we would say, "Why not from Brazil itself? Why should we deal with an individual state?" The laws of that state are not the same as the laws of Brazil; they are not the same as the laws of other states that form Brazil. We are ready to put our money into a scheme to operate in our own country if it has an ascertained law behind it, but we can not do so if it has one of what seems a subordinate, even though a self-governing, portion of a republic concerning which we have not readily available means of information, and concerning which we can not, through authoritative sources, directly inquire.

That is, to my mind, a thing which is hampering the development of American commerce, particularly in the Far East—this necessary uncertainty. It goes without saying that this does not imply any reflection upon the character or credit of any State. On the contrary, it is because the State is sovereign in its domestic affairs and may and does constantly develop its corporate laws, that the changes occur which make it utterly impossible for you and me, let us say as Chinese merchants having money to invest in a corporation which is to function in our own country, to do so on a basis which is known to be constantly evolving; whereas a Federal charter, which would be understood to be the net result of the best experience, and concerning which its development would be ascertainable at any time, would be a much more clear matter.

I think that is the substance of the matter. It has been so clear to us as a difficulty, that we are very glad indeed to have had the assistance of Mr. Denby in preparing this measure and submitting it for your approval, and we are very grateful to him for the part he has taken in the matter.

Senator FLETCHER. Have you examined this bill as it is now, and have you any suggestions to make as to any amendments?

Secretary REDFIELD. I think there are some amendments, which Mr. Denby will explain, arising from the American Chamber of Commerce of China.

Mr. DENBY. Yes.

Secretary REDFIELD. The legal questions you have gone over, Mr. Thurman?

Mr. THURMAN. Yes.

Senator FLETCHER. Has it occurred to you that one of the things desired to be accomplished by this measure was to put corporations engaged in foreign trade rather in a more favorable attitude in respect to our income-tax laws?

Secretary REDFIELD. No. The purpose is to put them on a competitive basis with corporations similarly engaged and incorporated under foreign laws.

Senator FLETCHER. I think perhaps section 61 is the section which does that, being somewhat different from the provisions of the law as regards taxes on corporations.

**STATEMENT OF MR. CHARLES DENBY, SPECIAL ASSISTANT
TO THE DEPARTMENT OF STATE, WAR TRADE BOARD.**

Senator FLETCHER. Will you please give your name, your present occupation, and your experience in China?

Mr. DENBY. I have been for many years in the consular service of the United States, including many years as secretary of legation at Peking, consul general at Shanghai, and some years as a merchant engaged in a private capacity there.

I returned to this country in 1915 from my position as consul general to Austria and was engaged in the motor-car trade, which I was interested in before—motor-car manufacturing.

I then volunteered for War Trade Board work under Mr. Vance McCormick and was promptly thereafter sent back to China again, on War Trade Board work.

I am now in this city, having spent the past year in China, acting in an advisory capacity on Chinese commercial questions.

Senator FLETCHER. Now, will you answer the question submitted to Secretary Redfield?

Mr. DENBY. In answer to the question submitted to Secretary Redfield by Senator Fletcher, I wish to state that it was largely a practical matter. A large part of the purpose of a Federal charter would be to secure the incorporation not of American capital under American charters, because we find in China a great abundance of money. We find a willingness for this money under proper guidance to associate itself with foreigners as share owners in public companies. Great Britain has realized this very keenly and has incorporated a great number of companies. I hesitate to say how much it is, but it is a great many million dollars of capital, largely in some cases Chinese and foreign, under the British flag.

In my own experience out there I have helped to incorporate a number of companies. In approaching capitalists of various nationalities, Chinese, Japanese, Americans, and others, I have been confronted with this question: "What is your charter going to be?" On my replying that I would incorporate under the law of some State of the United States, under a State charter, they would say, "We do not know anything about that. It does not mean anything to us. We are not prepared to risk our money there."

Great Britain has met this difficulty by the company ordinance of Hongkong, which permits the incorporation of the capital of all nationalities under the British flag, the incorporations thus acquiring British citizenship. I have found it better in my various ventures, electric-light and water-works companies, to avail of this British charter.

There is the peculiarity of all charters in this respect, that there never was a perfect charter written on the statute books. All charters are subject to modifications and interpretation and adjustment, leading to a number of applications to the courts of the company's nationality. Theoretically it is thus possible to eliminate from any charter all its inequalities, and it is thus theoretically possible to arrive at a perfect charter. Time is a necessary element in this. Under the American system it would evidently require just 48 times as long to develop a perfect charter as it does to develop the English uniform charter. If we are going to do business in China under

satisfactory terms, it will need a corporate capacity, which we must have. We must have a charter to which every judicial decision applies and not have the present utterly incongruous system of a dispute under a New Jersey charter being settled by a court and the terms of the decision not applying to a West Virginia charter, and so on.

Another point: It is entirely probable that the State charters never contemplated foreign business. A proper business charter should be so drawn up as to suit the conditions of the market in which it is going to be used. It should, in the course of judicial proceedings, be so adjusted to that market as to be adapted to its use there. We have not got the proper limitations on American activities in China under our present charters. We have not got the charters drawn up with an intelligent regard to the demands of local conditions there. We have such things as this: Under a State charter of one of the States, a company incorporated for \$100,000 doing business in China with \$1,500 paid up, an idea which is utterly at variance with common business sense anywhere. A bank does not give a letter of credit to a man for \$100,000 and say that it is only good for \$500; nor should a State give a charter for a man to go abroad and call him one thing whereas he is in reality another. It is such inequalities as that we have got to get around before we can get a perfect charter for business abroad.

The answer might be, let us revise State charters, let us revise the charters of the States; but it would require the revision of 48 different State charters. Much the simpler way is for the United States Government to enact a charter for United States foreign business alone. Under this bill we have this point covered.

Senator FLETCHER. Let me ask you with reference to that Hongkong ordinance, is that some special law that applies only to British charters or does it give the same rights to Americans to organize?

Mr. DENBY. Anybody can organize. I have incorporated companies in China, doing a large business there today, in which there is 80 per cent Chinese capital, a very considerable amount of American capital, some Danish capital, and a minimum of British capital. That is not at all unusual. It is an ordinary practice in China today.

Senator FLETCHER. Does that charter have to be called a British charter?

Mr. DENBY. Oh, yes; limited liability and everything else.

Senator FLETCHER. And to be recognized as a British company?

Mr. DENBY. It is a British company, absolutely subject to British law and subject to the British consular authorities in China.

Senator FLETCHER. Can you not organize an American company under the same ordinance?

Mr. DENBY. It is not American any more; it is British then.

Senator FLETCHER. It is?

Mr. DENBY. That is what I have done in my cases. I have done that in four cases.

Here is the Hongkong ordinance. Mr. Thurman has that. For us to avail of a proper charter we are driven into the arms of Great Britain, and we lose, in the corporate capacity, our citizenship.

Senator FLETCHER. What do you mean by the Hongkong ordinance? What legislative authority enacted that?

Mr. DENBY. Hongkong is a British colony, and they have authorized Hongkong under their colonial power to organize and issue charters for foreign corporations. Great Britain attaches so much importance to this that they have not only organized corporations in Hongkong but they constituted a separate registrar, where you can go and organize British charters, in Shanghai. They realize the importance of that. They realize that every time they take a Chinese dollar under their flag they have gained something from China and from ourselves. My companies appear in the list as British subjects, and every dollar we have in them is a British dollar for their purposes. They appear in the statistics as British investments, and it gives them an opportunity to enlist capital which we Americans have not got at all. The only way we will ever get it is by a charter adapted to our conditions there.

Senator FLETCHER. Do they have to pay income and other taxes?

Mr. DENBY. No; they are exempt from taxes, because they realize perfectly well that if you are going to invite capital which is not subject to taxes to come under your flag, you are never going to get it if you tax it. If the excess-profits tax and the income tax of the United States are to apply, you will get no capital at all. If you are going to be liberal about it, if you realize that thousands and thousands of people are doing business abroad and their capital is not American, you will get millions of dollars under the American flag.

Senator FLETCHER. That is the purpose of this bill?

Mr. DENBY. There is no selfish purpose in this bill, I believe, from the first word to the last. It is absolutely a business man's idea of getting the Government to give him the proper facility to do his business out there, and the percentage of American capital they have in these countries is very small. But you will have it; it will all be American, and it will be a benefit to the United States and in China. It will enable us to tap the great sources of Chinese wealth there that we can not now tap at all, and it will relieve our business men from the discrimination they are under in certain countries, and it will prevent operations of the disreputable character I have spoken of.

There is no power to create an artificial citizen of the United States, and all the activities of these people abroad are without safeguards and restrictions; and yet we have in China to-day a number of American companies in which the nominal capital bears no ratio to the actual capital invested. I submit that that is a commercial fraud, pretty nearly. Do you not think so? It is manifestly improper to launch on the sea of Shanghai an American company of \$100,000 nominal capital with \$2,000 only paid up. That is utterly improper. We provide against that, in concrete terms, in this bill.

Senator FLETCHER. It is that sort of thing which shakes confidence in American corporations.

Mr. DENBY. It is that sort of thing which shakes confidence in American corporations, and it has hurt every bona fide American corporation there. If you can provide any other means of correcting that than a Federal charter, I am willing to accept it. I do not think there is any other means, at all.

Senator FLETCHER. In what particular lines do you think our opportunities over there are?

Mr. DENBY. A very great variety of local manufacturing lines; a great variety of land-developing lines—subdivisions; a great number

of waterworks and electric plants; all kinds of manufacturing industries. The Chinese capital is abundant; it is sensitive; it does not like to come out; but give them the right opportunity and it comes out readily if it is under foreign protection; and the whole purpose of this is not to avoid income tax and excess-profits tax at all but to enable our American citizens out there to induce foreign capital to come in.

Senator FLETCHER. Would such a corporation doing business in foreign countries be permitted to reside in this country?

Mr. DENBY. I should think that would be a matter of the by-laws of the particular corporation. This bill provides that a majority of the directors shall be Americans. I do not know of any one act that could be done by the Department of Commerce as to which we would have to ask the consent or permission of any other power, China or Japan or anybody else, in the enactment of this law. It would be an indication of good faith.

Senator FLETCHER. Is there any provision for having the charter granted under this legislation recorded in foreign countries where the corporations do business?

Mr. DENBY. It is recorded in the office of the Secretary of Commerce of the United States, and it is to be recorded in such places in foreign countries as may be designated. You know we have a United States court for China now which has been in operation there for some years, and that United States court for China says that it has the right to grant charters.

Mr. THURMAN. Section 3 provides as follows:

Articles of incorporation shall be filed with the Secretary of Commerce, who shall record them and shall also record certificates relating to the corporation thereafter filed with him. In the case of corporations to be formed in noncontiguous territories of the United States of America or in localities in which the United States of America exercises extraterritorial jurisdiction, the articles of incorporation shall be filed in duplicate with the clerk of the highest court of the United States of America in the respective territory or locality who shall record them and shall also record certificates relating to the corporation thereafter filed with him.

Senator FLETCHER. Where is our court located there?

Mr. DENBY. It is located in Shanghai. It sits once or twice every year in the cities of Shanghai, Hankow on the west, and Tientsin in the north.

Senator FLETCHER. That was established by treaty with China?

Mr. DENBY. It is under the treaties we have, because we have an absolute treaty with China that Americans in China are exclusively under American law. We do not have to go to China and consult her in regard to the court act or in regard to this act.

Senator FLETCHER. Does that provide sufficient power to give that court authority to issue charters of this kind?

Mr. DENBY. The court derives its power under some provision of the organization which makes the United States law applicable to it. Now, the United States has granted certain powers to the judicial authorities in Alaska, and that court interpreted that to confer these powers on the United States Court at Shanghai. The United States Congress has never definitely done it, nor do I think it ever intended to give this power, but the power of the Shanghai court is derived from certain powers given to the court in Alaska, which, by the organizing act of the court itself, are held to be applicable to the court at Shanghai; and the court itself does hold that it has the right to grant char-

ters. If you want to introduce another element into the matter that will certainly create a lot of confusion, that nobody knows anything about, just let this go for a little while longer.

Mr. Thurman has pointed out here one thing that is very important. You can not incorporate under this act for banking business there. That is a self-denying provision that we in China are willing to agree to because we realize that you can not grant power to banks to do business as Americans in China until the banking laws apply to China and you can control the banks. We have no right to create banks to go out there and wander about without supervision or control. Do you think we have? That is the way I feel about it.

Senator FLETCHER. We have a provision in the law now with respect to establishing banks in foreign countries.

Mr. DENBY. Yes; I know that is one of the commerce laws.

Mr. THURMAN. Yes.

Senator FLETCHER. Under that a bank here can do business in foreign countries.

Mr. DENBY. Yes; as individuals can go anywhere else.

Senator FLETCHER. But I think that Americans out there should be very cautious about establishing banks, anyhow, because I understand they hang the bankers when they go broke!

Mr. DENBY. What we are afraid of is that a lot of rascals will get hold of American charters and go about the country doing things that we do not tolerate, and we have not got the machinery at the present time to stop them.

Mr. CUTLER. Mr. Chairman, I am anxious to go away. I have just a word to say.

Senator FLETCHER. Very well; we will hear you now.

STATEMENT OF MR. BURWELL S. CUTLER, CHIEF OF THE BUREAU OF FOREIGN AND DOMESTIC COMMERCE, DEPARTMENT OF COMMERCE.

Mr. CUTLER. The industrial ambition of almost every country to-day is to be independent, with a very decided home-trade tendency. This will make it necessary, for the next two years at least, to form companies with American and foreign capital in order for our merchants to get their goods abroad. Home-trade preference is evident all over Europe, and it is beginning to evidence itself in South America; and some form of incorporation should be devised that will allow native capital to come in on safe and sure ground, so that they can understand their liabilities. That is the merchandising purpose of this bill. Great Britain has adopted several laws which exclude outside capital from control of her companies, which is another phase of the home-trade preference.

Not only in China, but in South America, and even in South Africa, it has become advisable for a number of American companies to incorporate in those countries under the native law. They are not amenable in any degree to the American corporation laws; they have adopted another commercial flag. As Mr. Denby said a few minutes ago, we would like to put that kind of enterprise under the American flag, allowing us to merchandise American goods in American fashion.

Senator FLETCHER. Then you think this sort of a law ought to be enacted for promoting our trade not only in China but in other countries?

Mr. CUTLER. Exactly; I am afraid, otherwise, that their indirect legislation will block us out in many cases.

Senator FLETCHER. Yes.

Mr. CUTLER. A very large automobile concern of Detroit, of which we know a great deal, recently went to the United Kingdom just on that account and established their own factories there, and they have been forced to take on a certain amount of native capital. As they told me, if there had been in our laws an incorporation law covering them without their being subject to all the State laws they would have remained a purely American enterprise.

Senator FLETCHER. If they had a charter under this sort of legislation, would they still, if they wanted to do business in foreign countries, have to conform to the requirements of the laws in those countries?

Mr. CUTLER. They would, of course, in a way; but we think they would be accepted more readily, would find investors more readily, under a United States Federal law.

Mr. THURMAN. They would, of course, be subject to local laws. But the purpose of this is to induce capital to invest; and, having a distinct Federal law, any foreign investor knows right away the limit of his liabilities and what his rights and liabilities are growing out of his connection with this particular corporation. He has it right at hand, in other words.

Mr. DENBY. And everybody would be more willing to invest.

Mr. THURMAN. Yes.

Mr. CUTLER. That is all, Mr. Chairman. Thank you.

Senator FLETCHER. I am certainly much obliged to you. Now, will you finish, Mr. Denby?

STATEMENT OF MR. CHARLES DENBY—Resumed.

Mr. DENBY. If some such law as this is not passed, all American capital engaged exclusively abroad, as well as all foreign capital engaged in our American enterprises, would inevitably pass under a foreign flag.

Senator FLETCHER. You mean that with reference particularly to China?

Mr. DENBY. I mean it with reference to China, and, as Mr. Cutler pointed out, in South America they are incorporating under local laws. We are big enough abroad to give our people the facilities that they want.

Senator FLETCHER. You do not speak from experience as to any countries other than China?

Mr. DENBY. No. What I have done there is to incorporate a company there myself with a very small part of my capital from Americans; and I have had several companies incorporated there. I have one million taels—that is, \$1,300,000—in the Tientsin Waterworks Co., and it is British, under British law absolutely, and we have been necessarily compelled to depart entirely from American jurisdiction and control. I have done that in four-fifths of the cases; and I am merely in the same boat with others over there. They are all going to get Hongkong charters. The British merchants are inviting foreign merchants to join with them under the Hongkong charter; and it is practically inevitable that if you want to do busi-

ness in China, you must get a Hongkong charter, under this British law, in all cases, and it is not at all unusual for Chinese merchants to go to Hongkong and get a British charter and do business in China. They have the advantage that the Hongkong charter is very well known, nearly all the questions that would arise under the charter having been raised now, and there has been a stream of decisions that rectified the original document.

STATEMENT OF MR. ALBERT LEE THURMAN, SOLICITOR OF THE DEPARTMENT OF COMMERCE.

Mr. THURMAN. I really do not think that I have anything to say in addition to what has been said, Senator. Mr. Denby, as I understand it, tells me that he took this proposed act, which was drawn about a year ago, to some commercial organization in Shanghai—

Mr. DENBY. The American Chamber of Commerce of China.

Mr. THURMAN. The American Chamber of Commerce of China, at Shanghai, suggested a few changes in it, in the verbiage, of which he has notes and which he might put in the record, so that when finally considered, if favorably reported, the law will have those changes in it.

There is only one other thing. There is an editorial appearing in the Journal of Commerce and Commercial Bulletin of January 27, 1919, in favor of this proposed act, which I would like to have, if I can, inserted in the record as part of this hearing.

Senator FLETCHER. Very well.

(The editorial referred to is here printed in the record in full as follows:)

THE FEDERAL INCORPORATION LAW.

The American Chamber of Commerce of China has sent out a draft of a law to provide for the incorporation of American companies engaged in foreign trade. The draft follows the lines of a bill (S. 5194) introduced in the United States Senate by Mr. Fletcher at the instance of the Secretary of Commerce. The original draft was taken by Mr. Charles Denby, late consul general at Shanghai and now special assistant of the Department of State, to Shanghai, where it was submitted to the American Chamber of Commerce, and in its present form it is the result of the labors of a committee that amended it so as to conform to the requirements of American business in China. The necessity for such legislation arises from the fact that under existing American laws there is no machinery for the incorporation of companies for the special purpose of foreign trade, and companies organized in overseas commerce are compelled to incorporate under the laws of the various States with their frequently conflicting regulations. It is part of the argument of the chamber that in the period of reconstruction and competition for foreign trade following the war America must be ready to hold and develop its share in the foreign commerce of the world if its citizens are to minimize the financial burden they are called upon to bear and are to have a field for the increased manufacturing activity they have developed and the shipping they have built.

Broadly speaking, there is no reason why citizenship as applied to public companies should differ from the citizenship of individuals as to their status abroad. Thus it would seem to be much better for a company which is now the artificial creature of a legislature to be a citizen of the United States abroad rather than the citizen of New Jersey, Connecticut, or whatever State may have granted its charter. The public companies of the United States incorporated under charters of any of the 48 States of this Union are handicapped not only by a lack of uniformity in the acts under which they do business but by the fact that the legal decisions which rectify the inaccuracies of one do not necessarily apply to a charter granted by a neighboring State. This is doubly unfortunate because no act for the incorporation of public companies is ever perfect as it is placed on the statute books. It is in all cases subject to modification and interpretation by judicial decision for a period of years after it

is enacted. Since every such decision tends to perfect the act as originally passed, it would seem to be theoretically possible to arrive at a perfect corporation act, but it would also theoretically require 48 times as long to perfect American corporation law as to perfect an act uniform for the whole country.

It is essential for the proper conduct of business abroad, particularly in China, that corporate powers granted to a company should be granted with a view to the conditions under which the business must be transacted. The present American system of creating American companies which go abroad to do business, without a charter especially devised for the relations to the community amid which they are to settle, and without proper provision for trustworthy audit and proper control, is manifestly improper. It is, for example, highly undesirable in the present status of the American banking laws to endow an American corporation with banking powers in China under a State charter. It is argued with some force that the status of American banks abroad would be much higher if derived from the National Government rather than from the government of a State. It is confidently claimed that we would find a readier accession of foreign capital in the form of subscription to the stock of American companies if these companies were endowed with national rather than with State citizenship.

As commercial conditions exist in China, the Chinese are much inclined to invest their money in companies under foreign charters, but it has been found that a country which can bring under its charters the investment of large sums of Chinese money gains a status in the Chinese community not held by countries whose charters are less acceptable to the Chinese community. Hence a great field of commercial development would unquestionably be open to the United States if we could offer such a charter to the American merchant in China as would appeal to the Chinese investor. Great Britain has perceived the importance of this and has in her Hongkong company's ordinance provided a very suitable charter for business in China. It happens that this charter is almost universally used, and it is not uncommon to find incorporated under the Hongkong ordinance a variety of companies for an equal variety of purposes, in which the capital is mainly Chinese and that of other nations, even of British subjects themselves, is proportionately small. As a matter of fact, Americans who wish to invite the capital of Chinese and other nationalities are compelled to resort to the laws of England to do their business in a corporate capacity in China. They thus submit themselves to English jurisdiction and become, in their corporate capacity British subjects, under the control of British courts and consular authorities. Their business, moreover, figures as an asset of Great Britain in the communities in which they may be established.

In section 7 of the Fletcher bill it is provided that a majority of shares shall be held by American citizens in any company incorporated under the proposed act. In view of the fact that it would be impossible to incorporate any considerable number of American companies in China in which the majority of the stock would be held by Americans, and as it is extremely desirable to open these companies to investment by the Chinese, the Shanghai Chamber considered it necessary to change this provision. They accordingly proposed that the majority of the voting stock merely shall in all cases be held by Americans. This secures the object which the bill has in view, while enabling Chinese freely to invest in the companies organized under it. It is provided in both drafts that the majority of the directors shall be American citizens, and to this there seems to be no objection.

Section 70 of the bill contains the following provision:

"In order that corporations created under this act may be on an equal footing in foreign trade as corporations created under similar acts of other countries, the corporations created under the provisions of this act * * * shall be exempted from Federal tax of whatever nature, except the fees for filing the articles of incorporation and such other fees as may be provided by the Secretary of Commerce under the provisions of this act."

This is an essential feature of any act for the incorporation of companies under an American Federal charter abroad, since it is manifest that if the United States proposed to exact surplus-profits tax and other war taxes from companies created under an American charter, no international companies would apply for one of the American Federal type. Not only would no new companies be incorporated under American law, but none of the existing companies in which American interests now predominate would change their charters from Hongkong to the United States. The British Government recognizes this fact, and companies created under the Hongkong ordinances are exempt from taxation.

Mr. THURMAN. I may say that this act was largely taken from various sections of State laws. I examined very thoroughly the corporation codes of a number of the States and selected from them

those provisions that I thought were applicable to this proposed foreign-incorporation law.

Senator FLETCHER. I can see how a corporation organized under the laws of any of our States going out to China or any other country to do business might be at a very great disadvantage in competing with the other corporations, particularly where they were tax exempt by the laws under which they were organized, while our corporations are compelled to pay income taxes and excess-profits taxes, and that sort of thing, under the present law.

Mr. THURMAN. Yes.

Senator FLETCHER. And I take it that this provision in section 61 is intended to take care practically of that, so that our people may have in prospect fairly reasonable profits and very good dividends without having them taken away by taxation.

Mr. DENBY. That would not apply to the American citizens in the company. They would still be liable to pay all American taxes.

Senator FLETCHER. Yes; but the corporations themselves would not have to pay those taxes that are now provided by law for corporations in this country.

Mr. THURMAN. Yes; it is intended to exclude them from that, in reaching the surplus from which the dividends may be paid.

Senator FLETCHER. Yes. Now, Mr. Denby, what sections do you want to amend?

Mr. DENBY. First, amend section 7 of the bill.

Mr. THURMAN. Section 7 is changed so as to read as section 7 in the draft of a Federal incorporation law suggested by the American Chamber of Commerce in China.

Senator FLETCHER. You propose to change section 7 by striking out the whole of the present provisions and inserting in lieu thereof section 7 of the draft by the American Chamber of Commerce of China, which reads as follows:

SEC. 7. The persons named in the articles of incorporation under this Act, or a majority of them, shall order books to be opened for subscriptions to the capital stock of the corporation at such time or times and place or places as they deem expedient, and all persons subscribing to the stock of the corporation shall furnish proof of their nationality and at no time shall more than forty-nine per cent of the stock issued carrying voting power be owned, held or registered by persons other than citizens of the United States either in their own right or in trust for any other person or persons.

The next suggestion is to insert, in section 22, page 9, line 12, after the word "only" and before the semicolon, a comma and the words "voting or nonvoting".

Then you want us to strike out in section 28 all after line 19, page 11; that is, strike out lines 20 to 25, inclusive, on page 11?

Mr. DENBY. Yes, sir.

Senator FLETCHER. Then you want to add something to section 32, on page 13?

Mr. DENBY. Yes; we add that to bring section 7 into effect.

Senator FLETCHER. That is, you want to add at the end of section 32, on page 13, the following:

Except that it is provided by section 7 of this Act that at no time shall more than forty-nine per cent of the voting stock issued be owned, held or registered by persons other than citizens of the United States of America either in their own right or in trust for any other person or persons.

Your next suggestion is in section 61. The first part of that reads as follows:

SEC. 61. That in order to ascertain the surplus profits from which a dividend may be made, in the account of profit and loss there shall be charged and deducted from the actual profits—

First. All ordinary and extraordinary expenses, paid or incurred, in managing the affairs and transacting the business of the corporation.

Mr. DENBY. There we have added the words “and a reasonable depreciation upon its plant and property”.

Senator FLETCHER. That is, in section 61, on page 22, line 11, you propose to add, after the word “corporation”, a comma and the words “and a reasonable depreciation upon its plant and property”.

Mr. DENBY. In section 67, on page 24, line 10, there is a verbal change. In the bill you use the words “president of such board of directors.” In previous parts of the bill the word “chairman” is also used.

Senator FLETCHER. You want to insert in line 10, page 24, after the word “president”, the words “or chairman”.

Mr. DENBY. That is all, sir. Those are all the changes that Shanghai asks, after very mature consideration. They follow your prohibition against banking and think it is a very useful thing.

(The following correspondence and statement were ordered printed in full in the record:)

DEPARTMENT OF COMMERCE.

OFFICE OF THE SECRETARY.

Washington, December 10, 1918.

MY DEAR SENATOR FLETCHER: In almost every important country except the United States of America, corporations are formed under National or Federal laws such as the “British Companies Acts”. In the United States of America, this is not the case, as you know, and practically all except banking corporations are formed under the various State enactments. For purposes of domestic trading this situation presents no great difficulties since the main points and the distinctive features of each of the more important State enactments are fairly well known to most attorneys specializing in corporation law.

In foreign trade, however, it is the opinion of well-informed officials and business men that our corporations are at a disadvantage as compared with British registered companies, for instance, mainly because the terms of the British Companies Acts as well as legal interpretations of the meaning of these terms are fairly well known in all countries, while outside of the United States of America the terms of our many State enactments are known to but few. This acts as a great deterrent to the investment of foreign capital in our industrial undertakings as well as a handicap in doing business particularly where contractual obligations are involved which may eventually have to be settled according to the terms of some unknown State law.

Moreover, in certain countries, particularly China, the United States of America and other countries exercise extraterritorial jurisdiction and citizens of the United States of America are at a great disadvantage in such countries, because there is no Federal law under which they can organize a corporation. In China our citizens have been compelled to organize under British and British colonial laws, with a resulting tribute in the way of taxes, etc., to British sovereignty. For diplomatic support they are then compelled to look to the British Government which naturally will not get behind them as if they were British subjects.

The recently enacted legislation which permits manufacturers to combine for export business would be of much more assistance to our manufacturers if facilities for organizing these associations under Federal instead of State auspices were provided.

For these reasons, I beg to ask your kind assistance in introducing a bill in Congress to provide for the incorporation of companies engaged solely in foreign trade, and I submit herewith a draft of such a bill for your consideration.

Very truly yours,

WILLIAM C. REDFIELD, *Secretary.*

HON. DUNCAN U. FLETCHER,
United States Senate, Washington, D. C.

INTERNATIONAL HIGH COMMISSION,
UNITED STATES SECTION,
Washington, D. C., January 11, 1919.

MY DEAR SENATOR FLETCHER: I take pleasure in sending you a copy of a letter I have received from Col. Wigmore with reference to the bill introduced by you to permit the Federal incorporation of companies to be engaged in foreign trade.

Sincerely yours,

C. E. MCGUIRE,
Assistant Secretary-General.

HON. DUNCAN U. FLETCHER,
United States Senate, Washington.

WASHINGTON, D. C., January 9, 1919.

Dr. C. E. MCGUIRE,
International High Commission,
Treasury Department, Washington, D. C.

DEAR DR. MCGUIRE: I have received and studied the copy of the bill. It seems to me that article 69 covers the purpose described by Mr. Warburg, in that it authorizes the establishment of a corporation whose business should be to loan money by way of investment, taking bonds as securities, the borrower being in a foreign country; by another article the corporation is authorized to issue its own notes and bonds. This would seem to me to meet all requirements—unless there be anything too narrow in section 47, which authorizes the borrowing of money and the issuance of bonds in a sum not exceeding its capital stock.

The act does not provide for any Government guaranty attached to the debentures of the corporation, but I did not understand that Mr. Warburg's proposed measure regarded that as essential. In other words, if the debentures to be marketed bore the guaranty of an American corporation, this would overcome the ordinary distrust of the American investor. However, if by his plan some guaranty of the American Government should be regarded as a necessary help, it could probably be obtained by some alteration of the national banking law giving such debentures a preferred status in respect to assets available in the Federal reserve banks, providing Congress was willing to go that far.

In any event, it seems to me that the promise of this for Mr. Warburg's proposal is so adequate that it would be appropriate for the United States Section of the commission, if it introduces Mr. Warburg's proposal, to treat this bill as representative and to urge upon Congress the enactment of the new bill. I presume that you will soon hear from Mr. Warburg on this subject.

Sincerely yours,

JOHN H. WIGMORE.

THE WHITE HOUSE,
Washington, December 31, 1917.

MY DEAR MR. SECRETARY: Mr. Charles Denby's suggestion strikes me very favorably indeed and I am going to take the liberty of calling it to the attention of Mr. Sims, the new chairman of the Committee on Interstate and Foreign Commerce.

Cordially and sincerely yours,

WOODROW WILSON.

HON. WILLIAM C. REDFIELD,
Secretary of Commerce.

INCORPORATION OF AMERICAN COMPANIES IN CHINA.

There are two general methods of incorporation available to private companies in China. Either as incorporations under Chinese law and jurisdiction which, in the case of foreign corporations, under extraterritorial treaty rights, would probably not be held as permissible by the governments of the foreign nationals concerned, or as incorporations under the law of a treaty power whose laws governing incorporation extend from their own territorial jurisdiction to "extraterritorial" jurisdiction over those concessions and areas reserved for foreign occupation in China.

Chinese law in its operation respecting foreigners being established on treaty, the question, for example, of securing an interest in a Chinese public utility franchise,

is one which would have to be settled by negotiation. Each case would form a separate subject for negotiation and the result of such negotiation would take on the form of an established legal right, provided the sanction were obtained from the properly qualified representative of the Chinese authorities and the foreign government involved. While our treaties do not seem to accord us any positive right in connection with Chinese industrial and public utility organization, yet foreigners are not prevented from securing as favorable considerations as can be obtained through special negotiation, the character of which would depend upon the policy of the foreign government. There is no legal bar to foreigners obtaining public utility franchises, nor is there any law prohibiting foreigners from holding stock or bonds in Chinese industrial plants. This does not apply to certain enterprises considered as natural monopolies of the Government, such as railways, telegraph and telephone systems, upon which there are certain limitations to the activities of foreigners and Chinese private individuals alike.

Foreigners are by treaty technically limited to treaty ports in actual trade operations and are not privileged to lease land beyond treaty port limits for trading purposes. Incorporation in the treaty ports is usually effected under the laws of the nationality predominant in the organization, although there is no hindrance to corporations whose capital and personnel are of one nationality incorporating under the laws of another nation. Thus American capital is operating in China under the Hongkong corporation act, which is a very liberal incorporation law involving practically no taxation except a nominal stock tax. Such corporations must face all litigation in English courts and must look to British officials for diplomatic support, and a large amount of capital is thus transferred to the British flag, figuring as an asset in British commercial returns and tending to secure for Great Britain a priority of business in China.

At present to incorporate under American law the State laws must be resorted to, and no charter provided by any one State of the United States meets the requirements of the Far East. The minority shareholder is not sufficiently protected, there is no provision for supervision, an important item in the case of banks, nor do the decisions of the United States courts in one State cover charters in other States. Those State charters are distrusted by Chinese and other investors and put American enterprise under a handicap not suffered by the enterprises of other nationalities.

FEDERAL INCORPORATION LAW—"AN ACT TO PROVIDE FOR THE INCORPORATION OF COMPANIES FOR CARRYING ON FOREIGN BUSINESS EXCLUSIVELY, AND FOR OTHER PURPOSES."

[This draft of a Federal Incorporation Law was prepared by the American Chamber of Commerce of China and was officially adopted by the Chamber at a meeting of the Executive Committee, held in Shanghai on August 8, 1918.]

The American Chamber of Commerce of China is composed of more than 100 American firms or branches of American firms that have been engaged in business in China for periods ranging from one to forty years. Since these firms have been actually in the field of foreign trade and have been in competition with firms of other than American nationality, the Chamber feels that it is in a position to speak with authority on the needs of America in connection with the upbuilding of American trade after the war. In the light of an understanding of these problems, based upon actual experience, this draft of an American Federal Incorporation Law is respectfully submitted for the consideration of the Congress of the United States and of American business in general.

AMERICAN CHAMBER OF COMMERCE
OF CHINA.

Shanghai, November 1, 1918.

"An Act to provide for the incorporation of companies for carrying on foreign business exclusively, and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a corporation may be formed as provided in this Act for engaging in and carrying on any lawful business exclusively in countries foreign to the United States of America or countries in which the United States exercises extra-territorial jurisdiction.

§ Sec. 2. Any number of persons not less than three, a majority of whom shall be citizens of the United States, desiring to become incorporated under this Act shall subscribe and acknowledge articles of incorporation which must contain, first, the name of the corporation, which shall begin with the word "The" and end with the words "company, of the United States"; second, the location of its principal office and the place where its principal business is to be transacted; third, the purpose for

which it is formed; fourth, the amount of its capital stock and the number of shares into which it is divided.

Sec. 3. Articles of incorporation shall be acknowledged before an officer authorized to administer an oath, the form of which acknowledgment shall be prescribed by the Secretary of Commerce.

Articles of incorporation shall be filed with the Secretary of Commerce, or the clerk of the highest court of the United States in any foreign country, who shall record them and shall also record certificates relating to the corporation thereafter filed with him.

Sec. 4. Upon filing articles of incorporation, the persons who subscribe them, their associates, successors, and assigns, by the name and style provided therein, shall be a body corporate, with succession, power to sue and be sued, in any court of law or equity of the United States, or of the various states and territories, including the District of Columbia, or of any state or territory in which the United States enjoys sovereignty, or in the courts of any foreign country, or in the courts of the United States in any country in which the United States has extraterritorial jurisdiction, contract and be contracted with, also, unless specially limited, to acquire and hold all property, real or personal, necessary to effect the object for which it is created, and at pleasure convey it in conformity with its regulations and the laws of the country in which it is located. Such corporation also may make, use and at will alter a common seal, and do all other acts needful to accomplish the purposes of its organization.

Sec. 5. The Secretary of Commerce, or other recording officer named in Sec. 3, shall not file or record any articles of incorporation wherein the corporate name is likely to mislead the public as to the nature or purpose of the business its charter authorizes, nor if such name is that of an existing corporation, or so similar thereto as to be likely to mislead the public, unless the written consent of the existing corporation, signed by its president and secretary, be filed with such articles.

Sec. 6. A copy of the articles of incorporation so filed and duly certified by the Secretary of Commerce, or other recording officer, shall be prima facie evidence of the existence of the corporation therein named.

Sec. 7. The persons named in the articles of incorporation under this Act, or a majority of them, shall order books to be opened for subscriptions to the capital stock of the corporation at such time or times and place or places as they deem expedient, and all persons subscribing to the stock of the corporation shall furnish proof of their nationality and at no time shall more than forty-nine per cent of the stock issued carrying voting power be owned, held or registered by persons other than citizens of the United States of America either in their own right or in trust for any other person or persons.

Sec. 8. Such persons shall give at least thirty days' notice of the times and places of opening such books of subscription, by publication in a newspaper published or generally circulated in the place or places where they are to be opened. Such notice, however, may be waived in writing by all the incorporators, but the waiver shall be entered or copied in the corporate records.

Sec. 9. At the time of making a subscription to the capital stock of a corporation, twenty per cent of each share subscribed for shall be payable. The residue shall be paid in such installments at such times and places, and to such persons, as the directors of the corporation require.

Sec. 10. When twenty per cent of the capital stock is subscribed, the subscribers to the articles of incorporation, or a majority of them at once shall so certify in writing to the Secretary of Commerce and other recording officer with whom articles have been previously filed.

Sec. 11. The incorporators shall be liable to any person affected thereby, in the amount of any deficiency in the actual payment of twenty per cent on the stock subscribed for at the time of so certifying to the Secretary of Commerce and other recording officer.

Sec. 12. As soon as such certificate is made and filed with the Secretary of Commerce and other recording officer, the signers thereto shall give notice to the subscribers to the capital stock as provided in section 8 hereof, to meet at such time and place as the notice designates, for the purpose of electing not less than five directors to continue in office until their successors are elected and qualified at the first regular meeting which shall take place within one year and thereafter such meetings and elections shall be annual. But if all the subscribers to the capital stock are present in person or by proxy at such first meeting called for the election of directors, the notice required by this section may be waived by them in writing.

Sec. 13. At the time and place appointed, directors shall be chosen by ballot, by the stockholders who attend, either in person or by lawful proxies. At such and all other elections of directors the election shall be by ballot and each stockholder shall be entitled to as many votes as he owns shares of stock in the company, and the

persons receiving the greatest number of votes shall be elected directors. Directors shall not be elected in any other manner. No person shall vote on a share of stock on which an installment is due and unpaid.

Sec. 14. At such first election the subscribers of the articles of incorporation present, or any other persons chosen by the stockholders present, shall be inspectors of election, certify what persons are elected directors and appoint the time and place for holding their first meeting.

Sec. 15. Before every meeting held for the election of directors, or for the determination of any question, by the stockholders of a corporation, or by the subscribers to its stock, or by its creditors and stockholders for its reorganization, the officer or agent of the corporation having charge of the transfer of the stock under oath must make out a list of its stockholders, showing the number and classes of shares held by each, as shown by its books, on the date fixed for closing the stock transfers before its meetings or if no time be fixed therefor then at the hour of noon on the tenth day prior to the date of such meeting. Such list shall be delivered to the inspectors of the meeting, and be prima facie evidence of the ownership of its stock. In case good cause is shown for the absence of such list the inspectors shall ascertain the ownership of stock by the corporation books, stock certificates or other proof.

Sec. 16. The inspectors so appointed, or if none be appointed, then those selected by the meeting, shall receive and count the votes cast at such meeting, or at any adjournment thereof, either upon an election or for the decision of any question to be decided by vote, and determine the result. Their certificate shall be prima facie evidence thereof.

Sec. 17. The corporate powers, business and property of corporations formed under the provisions of this Act shall be exercised, conducted, and controlled by the board of directors.

Sec. 18. A majority of such directors must be citizens of the United States. All directors and executive officers shall be holders of stock of the company for which they are chosen, in an amount to be fixed by the by-laws.

Sec. 19. When the office of director becomes vacant, the board of directors may fill it for the unexpired term as provided for by the by-laws.

Sec. 20. As soon thereafter as is convenient, the board of directors chosen at any election shall select one of their number to be chairman thereof, and unless the regulations of the body otherwise provide for the election of a president and such officers, also appoint a secretary and treasurer of the corporation and such other officers as may be necessary.

Sec. 21. By a vote of a majority of its stock, at a regular meeting of a corporation organized under the provisions of this Act, it may increase the number of its directors to such number as is deemed advisable. In like manner, at any time, the number of directors can be reduced to not less than five. At a special meeting of stockholders, also called, and of which notice was given as provided for the election of directors, by vote of a majority of its stock, the increase in the number of directors may be made. Those elected shall hold their offices until the next annual election for directors and until their successors are elected and qualified.

Sec. 22. A corporation organized under the provisions of this Act must have a capital stock, which may consist of common and preferred or common only voting or non-voting; but at no time shall the amount of preferred stock at par value exceed two-thirds of the actual capital paid in in cash or property.

Sec. 23. When the capital stock is to be both common and preferred, it may be provided in the articles of incorporation that the holders of the preferred stock shall be entitled to yearly dividends of not more than eight per cent, payable quarterly, half-yearly, or yearly, out of the surplus profits of the company each year in preference to all other stockholders. Such dividends also may be made cumulative.

Sec. 24. A corporation issuing both common and preferred stock may create designations, preferences, and voting powers, or restrictions or qualifications thereof, in the certificate of incorporation, and if desired, preferred stock may be made subject to redemption at not less than par, after a fixed time and at a set price, to be expressed in the stock certificates thereof.

Sec. 25. Should any corporation organized under the provisions of this Act become insolvent, no holder of preferred stock shall be liable for its debts until after the remedy against the common stockholders upon their liability, as hereinafter provided, has been exhausted, and then only for such amount as remains unpaid. Such liability in no event shall exceed that fixed by this Act for the common stock of such corporation. (See Section 38.)

Sec. 26. Upon the insolvency or dissolution of any corporation organized under the provisions of this Act the holders of preferred stock shall be entitled to receive from

the assets of the corporation remaining after paying its liabilities, the full payment of its par value, before anything is paid to the common stock.

Sec. 27. The directors of such corporation, when organized, shall cause to be kept a record of all stock subscribed and transferred, and its secretary or recording officer shall register all subscriptions and transfers of stock. For that purpose a book shall be kept, and when a certificate of stock is assigned and delivered by a stockholder, the assignee thereof on demand may have it duly transferred therein by such officer, who at the same time shall enroll also the name of the assignee as a stockholder. The books and records of all corporations organized under the provisions of this Act at all reasonable times shall be open to the inspection of every stockholder.

Sec. 28. Title to a certificate and to the shares represented thereby can be transferred only,

(1) By delivery of the certificate indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or

(2) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby signed by the person appearing in the certificate to be the owner of shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.

No provision shall be incorporated in the charter or articles of incorporation or by-laws of the corporation or printed upon the certificates of stock which shall provide for the transfer of shares in other manner than is provided for in this section.

Sec. 29. Nothing in this Act shall be construed as enlarging the powers of an infant or other persons lacking full legal capacity, or limiting the power of a trustee, executor or administrator, or other fiduciary, to make a valid endorsement, assignment or power of attorney.

Sec. 30. Nothing in this Act shall be construed as forbidding a corporation,

(1) To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, or

(2) To hold liable for calls and assessments a person registered on its books as the owner of shares.

Sec. 31. The title of a transferee of a certificate under a power of attorney or assignment not written upon the certificate, and the title of any person claiming under such transferee, shall cease and determine if, at any time prior to the surrender of the certificate to the corporation issuing it, another person for value in good faith, and without notice of the prior transfer, shall purchase and obtain delivery of such certificate with the endorsement of the person appearing by the certificate to be the owner thereof, or shall purchase and obtain delivery of such certificate and the written assignment or power of attorney of such person, though contained in a separate document.

Sec. 32. There shall be no lien in favor of the corporation upon the shares represented by a certificate issued by it, and there shall be no restriction upon the transfer of shares so represented by virtue of any by-law or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate. Except that it is provided by Section 7 of this act that at no time shall more than forty-nine per cent of the voting stock issued be owned, held or registered by persons other than citizens of the United States of America either in their own right or in trust for any other person or persons.

Sec. 33. If an installment on stock is unpaid for thirty days after the time it was to be paid, whether the stock is held by the subscriber, an assignee, or transferee, it may be collected by suit, or the directors may sell such stock for the installment then due.

Sec. 34. Before the directors can sell such stock, they shall give thirty days' notice of the time and place of sale, in some newspaper in general circulation of the place or at the place where the delinquent holder resided when he subscribed for it or became such assignee or transferee, or of his actual residence at the time of sale.

Sec. 35. When a sale of such stock is made, if after paying from its proceeds the amount due on the stock, a balance remains, the same shall on demand be paid to the owner. But if such proceeds fail fully to pay such installment, any balance may be recovered by action against the subscriber, assignee, or transferee.

Sec. 36. A corporation organized under the provisions of this Act may purchase, or otherwise acquire, and hold shares of stock in other kindred but not competing corporations. This shall not authorize the formation of a trust or combination for the purpose of restricting trade or competition.

Sec. 37. Every corporation organized under the provisions of this Act, annually shall make a statement of its financial conditions, setting forth its assets and liabilities,

and file the same with the Secretary of Commerce and other recording officer and furnish to each stockholder a true copy thereof.

Sec. 38. The stockholders of a corporation organized under the provisions of this Act shall be severally and individually liable to the creditors of such corporation for the unpaid amount due upon the balance of stock held by them, respectively, for all debts and contracts made by such corporation, until the whole amount of capital stock fixed and limited by such corporation shall have been paid in.

Sec. 39. An action upon the liability of the stockholders of such corporation under the next preceding section can only be brought within two years after the debt or obligation shall become enforceable against the stockholders.

Sec. 40. The term "stockholder" as used in the next preceding sections, shall apply not only to persons who appear by the books of the corporation to be such, but also to equitable owners of stock, although on the books of the corporation it appears in the name of another person.

Sec. 41. The original capital stock of a corporation organized under the provisions of this Act shall not be increased until the organization is completed and the officers duly elected and qualified. After such organization is completed and the officers duly elected and qualified an increase in the capital stock may be made by a vote of the holders of a majority of its stock, at a meeting called by a majority of its directors, at least thirty days' notice of the time, place and object of which has been given by publication in some newspaper of general circulation, or by letter addressed to each stockholder whose place of residence is known. Or, the stock may be increased at a meeting of the stockholders at which all are present in person, or by proxy, and waive in writing such notice by publication or letter; and also agree in writing to such increase, naming the amount thereof to which they agree. A certificate of such action shall be filed with the Secretary of Commerce and other recording officer named in Sec. 3.

Sec. 42. Upon the assent in writing of the stockholders of a corporation, organized under the provisions of this Act, representing at least three-fourths of its capital stock, to increase the capital stock, it may issue and dispose of preferred stock in the manner provided therefor. Upon the increase of stock, a certificate shall be filed with the Secretary of Commerce or other recording officer.

Sec. 43. Upon the assent in writing of the persons in whose names a majority of the shares of the capital stock of a corporation organized under the provisions of this Act stands on its books, the board of directors of such corporation may reduce the amount of its capital stock and the nominal valuation of all the shares thereof, and issue certificates therefor. The rights of creditors shall not be affected by such reduction in the amount of such capital stock, and a certificate of such action shall be filed with the Secretary of Commerce or other recording officer.

Sec. 44. The directors of a corporation organized under the provisions of this Act may adopt a code of by-laws for their government, consistent with the regulations of the corporation and the laws of the country in which its principal office is located, and may change such by-laws at pleasure.

Sec. 45. Regulations for the government of corporations organized under the provisions of this Act may be adopted or changed by the assent thereto, in writing, of the holders of two-thirds of the stock, or by a majority of the stockholders present at a meeting held for that purpose, notice of which has been given personally to each member or stockholder, or by publication in some newspaper of general circulation in the place where the head office of the corporation is located.

Sec. 46. When no other provision is especially made, a corporation organized under the provisions of this Act, by its by-laws may provide,

- (1) The time, place and manner of calling and conducting its meetings.
- (2) The number of stockholders or members constituting a quorum.
- (3) The time of the annual election for directors and other officers, and the manner of giving notice thereof.
- (4) The duties and compensation of directors and other officers.
- (5) The manner of election, or appointment, and the tenure of office, of all officers other than the directors.

Sec. 47. A corporation organized under the provisions of this Act may borrow money in any sum not exceeding the amount of its capital stock, issue its notes, or coupon or registered bonds therefor, bearing any legal rate of interest, and secure their payment by a mortgage of its property, real or personal, or both.

Sec. 48. A mortgage of real and personal property made by a corporation organized under the provisions of this Act shall be duly recorded in the office of the recorder of deeds or other proper officer at each place in which the real or personal property mortgaged is situated or employed, and a certified copy of such mortgage shall be filed with the Secretary of Commerce and other recording officer.

Sec. 49. A mortgage recorded with the recorder of deeds or other proper officer, as provided for in the preceding section, shall be a good and sufficient lien from the date of its filing for record where it is recorded upon the personal as well as the real property of such corporation.

Sec. 50. A corporation organized under the provisions of this Act which lawfully has issued registered or coupon bonds, upon the request of a holder thereof, may change such registered into coupon bonds, or coupon into registered bonds, either by substitution or by proper endorsement thereon. All liens, securities, and rights which existed on or accrued to such original bonds shall be and continue on and to such substituted or indorsed bonds.

Sec. 51. No corporation organized under the provisions of this Act shall sell its entire property and assets to any person, persons, partnerships, associations, or corporation, whether organized for the same or similar purposes or otherwise, unless three-fourths of the directors of such corporation authorize the execution of an agreement therefor prescribing the terms, considerations and conditions thereof. The considerations may be money, stocks, bonds, or other instruments for the payment of money, or any valuable consideration.

Sec. 52. The agreement provided for in the preceding section shall be submitted to the stockholders of the corporation at a meeting called for the purpose, fifteen days' notice of the time and place of holding which, and the object thereof, shall be given by registered letter containing a written or printed notice addressed to each of the persons in whose names the stock of the corporation stands on its books. But when all the stockholders are present at such meeting in person or by proxy, notice may be waived in writing.

Sec. 53. At such meeting of the stockholders the agreement of the directors shall be considered and a vote by ballot taken for its adoption or rejection. For each share of stock on which all the installments called for by the board of directors have been paid the holder thereof shall be entitled to one vote. The ballots must be cast in person or by proxy, and if three-fourths of all the votes cast at the meeting be for the adoption of the agreement, it shall be valid and binding on such corporation. Upon its adoption, the officers of the corporation shall execute and deliver to the purchaser good and sufficient deeds and transfers of all the property and assets of the corporation, upon the terms and conditions in the agreement provided.

Sec. 54. A sale of its entire property by a corporation organized under the provisions of this Act, as hereinbefore authorized, shall not be made for the formation of or to a trust or combination for the purpose of restricting trade or preventing competition.

Sec. 55. A corporation organized under the provisions of this Act may amend its articles of incorporation as follows:

1. So as to change its corporate name—but not to one already appropriated, or to one likely to mislead the public.
2. So as to change the place where it is to be located, or its principal business transacted.
3. So as to modify, enlarge, or diminish the objects or purposes for which it is formed.
4. So as to add to them anything omitted which lawfully might have been provided for originally in such articles. But the capital stock of such corporation shall not be increased or diminished by such amendment except in the manner provided in section 41 of this Act, nor shall the purpose of its original organization substantially changed.

Sec. 56. Amendments to articles of incorporation may be made at any meeting of the stockholders thereof, of which, and of the business to come before it, thirty days' notice has been given by a majority of the directors in a newspaper published and of general circulation at the place where the corporation's principal place of business is located, and by a vote of the owners of at least three-fifths of its capital stock then subscribed.

Sec. 57. When thus adopted, a copy of such amendment, with a certificate thereto affixed, stating the fact and date of its adoption, that such copy is a true copy thereof, signed by the president and secretary of the corporation, sealed with its seal, shall be filed with the Secretary of Commerce and other recording officer, who shall cause by note on the margin of the record of the original articles filed by such corporation, and on the margin of the index thereto, the volume and page where such amendment is recorded.

Sec. 58. Amendments to articles of incorporation shall not take effect until filed for record with the Secretary of Commerce or other recording officer, nor, unless it be waived, as provided in the next section, until the corporation gives notice of them in some newspaper of general circulation in the place where the principal office or business is located, for three consecutive weeks.

Sec. 59. All notices required by the preceding section in such proceedings to amend the articles of incorporation, may be waived when the holders of all the capital stock of a corporation consent thereto in writing.

Sec. 60. Directors of a corporation organized under the provisions of this Act shall not make dividends except from surplus profits arising from the business of the corporation.

Sec. 61. In order to ascertain the surplus profits from which a dividend may be made, in the account of profit and loss there shall be charged and deducted from the gross profits.—

1. All ordinary and extraordinary expenses, paid or incurred, in managing the affairs and transacting the business of the corporation, and a reasonable depreciation upon its plant and property.

2. Interest paid, or then due or accrued, on debts it owes.

3. All losses of the corporation. In computing its losses, debts owing to it which have been due without prosecution, or interest paid thereon, for more than one year, or upon which judgment was recovered, but has been more than two years unsatisfied, and on which also for that period, no interest was paid, shall be included.

Sec. 62. When all the capital stock of a corporation has not been actually paid in the corporation shall not advertise the amount of authorized capital stock without also stating the amount actually paid in, nor shall a corporation advertise a greater dividend than has actually been earned and credited or paid to its stockholders.

Sec. 63. Every director of such a corporation, who violated or is concerned in violating any provision of the four preceding sections hereof shall be personally liable to the creditors and stockholders of the said corporation for any loss which thereby they respectively sustain.

Sec. 64. Every corporation organized under the provisions of this Act shall file an annual report with the Secretary of Commerce and other recording officer during the month of January, in such form as the Secretary of Commerce may prescribe. This report shall be accompanied by an affidavit in such form as the Secretary of Commerce may prescribe, subscribed and sworn to by an officer of the corporation having knowledge of the facts therein contained.

Sec. 65. Upon the dissolution of a corporation organized under the provisions of this Act, and unless other persons be appointed by the stockholders, the directors of the affairs of such corporation shall be the trustees of the creditors and stockholders thereof, and have full power to settle its affairs, collect and pay outstanding debts, and divide among the stockholders the money and other property remaining, in proportion to the stock of each stockholder paid up, after the payment of debts and other necessary expenses.

Sec. 66. If all the stockholders present at such meeting in person or by proxy decide to surrender and abandon its corporate authority the corporation shall be abandoned and dissolved upon the filing of a certificate of the abandonment or dissolution with the Secretary of Commerce.

Sec. 67. When a majority of the directors or other officers having the management of a corporation organized under the provisions of this Act, which has completely closed its business, and paid all the debts and liabilities incurred by it, desire to surrender its corporate authority and franchises, they, or the president of such board of directors, may call a meeting of the stockholders at such time or place as he or they designate by publication for four weeks in some newspaper published and of general circulation of the country wherein the principal office of the corporation is located and by written notices addressed to each of the stockholders whose residence is known, of the object, time and place of the meeting.

Sec. 68. The persons so constituted trustees may sue for and recover the debts and property of the dissolved corporation, by the name of trustees of the corporation, describing it by its corporate name, and jointly and severally they shall be responsible to the creditors and stockholders of the corporation, to the extent of its property and effects coming into their hands. Such trustees may be made or become parties to any action, by or against the corporation. All liens or judgments existing at the time of the dissolution either in favor of or against the corporation, shall continue in force as if the dissolution had not taken place.

Sec. 69. No corporation created under the provisions of this Act shall, by any implication or construction, be deemed to possess the power of carrying on the business of discounting bills, notes or other evidences of debt, of receiving deposits of money, or foreign coins, or buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt for circulation as money: PROVIDED, HOWEVER, that corporations created or to be created under the provisions of this Act, to buy, sell and otherwise deal in notes (not including the discounting of notes), open accounts and other similar evidences of debt (not including bills of exchange), or to loan money and to

take notes, open accounts and other similar evidences of debt as collateral security therefor, shall not be construed or considered to be within the prohibition of this section; and corporations created or to be created for such purposes may charge such amounts as may be agreed upon by the respective parties.

Sec. 70. In order that this act may be as effective, useful and attractive as similar acts enacted by other countries and in order that corporations created under this act may be on an equal footing in foreign trade as corporations created under similar acts of other countries, all corporations created under the provisions of this Act and doing business exclusively in countries foreign to the United States and those countries in which the United States exercises extraterritorial jurisdiction, shall be exempt from federal tax of any nature whatsoever, except the fees for filing the articles of incorporation and such other fees as may be prescribed by the Secretary of Commerce under the provisions of this Act.

Thereupon, at 11.30 o'clock a. m., the subcommittee adjourned, subject to the call of the chairman.